have been insured by more than one primary insurance carrier, each of which may have made a payment for any individual claim.

D. In cases where excess carriers or state-run compensation funds make an excess payment (usually amounts over $1mil) in addition to the primary insurer payment, two reports are sent to the Data Bank, which then look like two smaller payments for two separate claims instead of one larger payment.

E. In many cases, insurers do not apportion payments made on behalf of multiple defendants, such as in a case where $300,000 is paid on behalf of three doctors. In this instance, the Data Bank instructs the reporting entity to file a report for each doctor, each of which will have $300,000 in the payment field. There is a separate field which should indicate that a payment was made on behalf of three practitioners. For these data records, the $300,000 must be divided by 3 to get an accurate average payment amount for each of the three data records.

F. The Data Bank estimates that they are only getting 50% compliance with reporting entities. They have done quite a bit of work looking at insurers reports, and have uncovered little non-compliance. Thus, the problem may lie in self-insured plans, etc., if the non-compliance does in fact exist. In any event, the total amounts reported may not be complete.

APPENDIX D

STATES WITH CAPS OF $250,000 IN PLACE PRIOR TO 1991

State	91 Total payment	02 Total payment	% change
CA	$167,057,855	$245,695,565	47.1
CO	12,766,034	47,346,789	270.9
IN	9,403,230	12,381,153	31.7
KS	24,557,394	21,153,550	−13.9
Total	213,784,513	326,577,057	52.8

STATES WITHOUT CAPS OF $250,000 IN PLACE PRIOR TO 1991

State	91 Total payment	02 Total payment	% change
AK	$2,976,192	5,036,632	69.2
AL	9,662,216	32,632,538	237.7
AZ	28,873,130	84,213,842	191.7
AR	7,567,795	24,988,884	230.2
HI	1,434,373	13,089,167	812.5
ID	3,300,506	6,903,966	109.2
CT	26,348,067	90,520,944	243.6
DE	6,658,001	29,206,312	338.7
DC	22,199,687	15,437,950	−30.5
FL	129,236,245	311,539,387	141.1
GA	40,712,086	116,301,797	185.7
IL	179,429,302	266,647,177	48.6
IA	15,868,786	28,037,027	76.7
KY	12,752,049	49,043,250	284.6
LA	23,507,975	46,669,001	98.5
MA	59,139,301	104,680,958	77.0
MD	30,065,789	85,903,788	185.7
ME	6,090,688	15,946,958	161.8
MI	85,142,892	92,333,909	8.4
MN	18,600,625	24,181,892	30.0
MO	65,472,456	61,868,283	−5.5
MS	7,400,134	39,598,854	435.1
MT	4,712,949	13,164,568	179.3
NE	7,440,991	17,447,940	134.5
ND	2,715,134	5,338,875	96.6
NM	11,594,337	10,997,782	−5.1
NV	11,616,548	38,994,264	235.7
NH	6,284,067	16,745,000	166.5
NJ	100,284,888	242,389,131	141.7
NY	328,102,491	640,812,015	95.3
NC	31,731,491	85,032,981	168.0
OH	80,370,391	150,743,405	87.6
OK	20,210,459	34,392,805	70.2
OR	18,050,981	34,278,386	89.9
PA	182,563,738	402,757,919	120.6
RI	12,274,927	13,684,082	11.5
SC	8,143,410	40,855,294	401.7
SD	1,207,251	3,406,750	182.2
TN	29,032,250	48,950,050	68.6
TX	167,034,605	252,306,549	51.1
UT	8,413,623	22,920,619	172.4
VA	21,037,767	66,040,922	213.9
VT	1,651,109	2,077,715	25.8
WA	21,775,473	77,739,921	257.0
WI	45,242,041	54,299,009	20.0
WV	26,823,084	40,899,280	52.5
WY	2,958,895	7,293,550	146.5
Total	1,930,735,003	3,863,314,696	100.1

NPDB total payouts by PIAA state 1991–2002.

APPENDIX E—STATEMENT OF THE DIVISION OF PRACTITIONER DATA BANKS, HEALTH RESOURCES AND SERVICES ADMINISTRATION, U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES, CONCERNING USE OF MEDIANS OF MALPRACTICE PAYMENTS REPORTED TO THE NATIONAL PRACTITIONER DATA BANK FOR ANALYSIS OF THE IMPACT OF CAPS ON MALPRACTICE PAYMENTS, JULY 2, 2003

The Weiss Ratings, Inc. report ''Medical Malpractice Caps: The Impact of Non-Economic Damage Caps on Physician Premiums, Claims Payout Levels, and Availability of Coverage'' mentions data from the National Practitioner Data Bank in its discussion of the relationship between caps on medical malpractice payments and medical malpractice insurance premiums. The report states on page 7:

Caps do reduce the burden on insurers—Using data provided by the National Practitioner Data Bank, we compared the median payouts in the 19 states with caps to those in the 32 states without caps for the period between 1991 and 2002, with the following results:

Payments reduced. In states without caps, the median payout for the entire 12-year period was $116,297, ranging from $75,000 on the low end to $220,000 on the high end. In states with caps, the median was 15.7 percent lower, or $98,079, ranging from $50,000 to $190,000. Since caps in many states were not imposed until late in the 12-year period, this represents a significant reduction.

Growth in payouts slowed substantially. The median payout in the 32 states without caps increased by 127.9 percent, from $65,831 in 1991 to $150,000 in 2002. In contrast, payouts in the 19 states with caps increased at a far slower pace—by 83.3 percent, from $60,000 in 1991 to $110,000 in 2002.

In short, it's clear that caps do accomplish their intended purpose of lowering the average amount insurance companies must pay out to satisfy med mal claims.

Although the statistical median is usually the best measure of the ''average'' malpractice payment received by claimants, it does not show the ''burden on insurers.'' The ''burden on insurers'' is the total amount of dollars paid, not the ''average'' or median payment.

Statistically, the median is the payment amount in the middle of a rank-ordered list of all payments. Thus in a set of 101 payments, 50 of which were for $1,000, 1 of which was for $25,000, 49 of which were for $100,000, and 1 of which was for $1,000,000, the median payment would be $25,000. Arguing that the burden of payments on insurers is low because the median payment is $25,000 is misleading. The total amount paid cannot be determined through use of the median. The burden on insurers would be better measured by examining the total of all payments by insurers.

ADDITIONAL STATEMENTS

U.S. INSTITUTE OF PEACE'S 2003 NATIONAL PEACE ESSAY CONTEST WINNER

● Mrs. FEINSTEIN. Madam President, on Wednesday, June 25, Granite Bay Student Kevin Kiley visited my office as part of the U.S. Institute of Peace's 2003 National Peace Essay Contest, NPEC, Awards Week in Washington.

Mr. Kiley had been selected by the Institute as the California State winner as well as the national award winner for his essay, ''Kuwait and Kosovo: The Harm Principle and Humanitarian War.'' The U.S. Institute of Peace has sponsored the essay contest annually since 1986 in the belief that expanding the study of peace, justice, freedom, and security is vital to civic education.

I am proud of Mr. Kiley's exemplary essay, commend his dedication to this studies, and congratulate his teachers at Granite Bay High School. This young man, who is thoughtful and mature beyond his years, will be a leader in his future endeavors in peace studies.

I would like to bring to my colleaguess' attention a copy of Mr. Kiley's first place essay. I ask that it be printed in the RECORD.

The essay follows.

KUWAIT AND KOSOVO: THE HARM PRINCIPLE AND HUMANITARIAN WAR

War causes harm; of this there is no doubt. In determining the justification of war, the question hence becomes: when is it justified to cause harm? The only morally acceptable answer is that causing harm is justified if it prevents further harm. Thus, in general terms, the only justifiable reason to go to war is to minimize harm—if war is the lesser of two evils.

Underlying the issue of just and unjust war is the concept of sovereignty, for declaring war on a nation is a direct violation of its right to self-government. This adds another element to the harms calculation involved in justifying war. Even the United Nations accepts the view that sovereignty has inherent value, stating in a 1970 Declaration, ''Every state has an inalienable right to choose its political, economic, social, and cultural system, without interference in any form by another state.'' Waging war against a sovereign nation constitutes a direct violation of this ''inalienable right.''

In determining what circumstances justify violating a nation's sovereignty, the laws governing the conduct of individuals provide a useful analogy. In On Liberty, John Stuart Mill establishes the Harm Principle, a criterion for when it is justified to violate an individual's sovereignty. Mill writes, ''the only purpose for which power can be rightfully exercised over any member of a civilized community, against his will, is to prevent harm to others.'' Mill's aphorism can be taken a step further; it applies with equal force to sovereign nations. Just as an individual's freedom must be restricted if it harms other individuals, so too must a nation's freedom be restricted if it harms other nations. This principle, however, does not simply govern the relationship between two warring nations, for today's complex world is one of political interdependence. With the North Atlantic Treaty Organization, the United Nations, the Arab League, and other alliances, even those wars that are relatively limited in scope are becoming ''world wars.'' Therefore, in applying the Harm Principal to the realm of nation states, any just war standard must specify what circumstances justify intervention by an international coalition. International intervention in Kuwait and Kosovo illustrate the success and failure of meeting just war criteria.

In 1990, Iraq sent shockwaves around the world by invading Kuwait, its small but wealthy neighbor. Within twelve hours of the invasion, ''all of Kuwait . . . was under Iraqi control.'' Following Iraqi dictator Saddam Hussein's overwhelming victory, the resolve of U.S. President George Bush quickly became apparent; he immediately declared that the invasion ''will not stand,'' that ''no nation should rape, pillage, and brutalize its

neighbor.'' In the five months between Iraq's invasion of Kuwait and the dropping of the first U.S. bomb, Bush tried to convince the American people, along with the international community, that intervention was a moral responsibility.

At the time of the invasion, the depth of Hussein's motives was unclear. Was he a power-hungry despot—another Hitler—or was he simply trying to claim the territory he felt was rightfully his? Would he stop with Kuwait, or did he have his sights set on hegemony in the Middle East? While Hussein's territorial ambitions remained uncertain, there were more tangible consequences of appeasing Iraq's territorial gains. Western oil interests in the region—and the fate of these interests if Hussein were to gain control of OPEC—were undoubtedly a weight on the scale. Moreover, beyond these utilitarian considerations, the fact remained that Kuwait's sovereignty had been violated, and according to the Harm Principal, a military response was justified on this basis alone.

When the war was over, the stated objectives of the United States and its allies had been achieved: ''Kuwait was liberated, Saudi sovereignty assured, Persian Gulf oil secure.'' Given these results, the ejection of Iraq from Kuwait was a just end, but a just end is only half of the just war equation. For a war to be justified, the benefits must outweigh the costs—the harm of action must be less than the harm of inaction. Whether this was possible in the Persian Gulf was a matter of much speculation. As with any war, the loss of American lives was a foremost concern. This concern led some—including General Collin Powell—to suggest that economic sanctions might be a viable alternative to war. In late 1990, however, it became increasingly clear that sanctions would do little more than starve the Iraqi people. According to a PBS Frontline report, ''the CIA was telling President Bush it could take years for sanctions to drive Saddam from Kuwait.'' Furthermore, it also became clear that U.S. technology could enable the U.S. to fight a relatively painless war, one with few U.S. lives lost and minimal civilian casualties. And this optimistic outlook became a reality, as the U.S. and its allies waged one of the most flawless military campaigns in history. Thus, the Gulf War meets the criteria of a just war: It achieved a just end and minimized harms.

While the involvement of the United States in the Gulf War demonstrates the validity of Mill's Harm Principle as a justification for war, a key distinction must be made between the Principle's applicability on an individual level and on a national level. The constituent parts of an individual have no inherent worth; it is only the individual himself that is of value. Nations, conversely, are comprised of individuals. Thus, the constituent parts of the nation are themselves valuable. While Mill holds that morality demands the individual be completely sovereign in his sphere—that no just law could prevent him from harming himself—this is not the case with nation states. For if the actions of a government cause harm to its citizens, the sovereignty of the nation and the sovereignty of the individuals conflict. And on this basis, a case can be made for humanitarian war—military intervention that prevents a nation from harming its citizens, its constituent parts.

In the last decade, the most vivid example of humanitarian intervention was the crisis in Kosovo, a ''paradigmatic instance of humanitarian intervention in the very name of humanity itself.'' There was little doubt, in 1999, that Slobodan Milosevic's ethnic cleansing of Albanians constituted a crime against humanity. While Milosevic's actions did not directly harm another sovereign nation, they so egregiously harmed his own people—so ''shocked the conscience of mankind''—that international action was deemed necessary. The end of saving Albanian lives was certainly justified. In fact, the moral responsibility espoused by U.S. President Bill Clinton was perhaps even greater than that Bush spoke of in 1990. And aside from war, there existed no viable option for fulfilling this responsibility. The means employed by the Clinton Administration and NATO, however, were inconsistent with just war principles.

The history of the Kosovo crisis is replete with ''collateral damage'' to civilians. According to Jean Elshtain, ''once we had exhausted the obvious military targets, we degraded the infrastructure on which civilian life depends.'' Largely as a result of high altitude bombing by NATO forces, 2,000 civilians were killed and 6,00 wounded, and countless others would suffer and die because of infrastructure destruction. This ''collateral damage'' can be directly attributed to the ''no-cost'' strategy employed by NATO troops, which refused to risk American and European lives even as the welfare of the Serbian people hung in the balance. In the end, this overemphasis on some lives and devaluation of others undermined the moral authority of NATO's crusade. In ''War and Sacrifice in Kosovo,'' Paul W. Kahn sums up this contradiction well when he writes of the ''incompatibility between the morality of the ends, which are universal, and the morality of the means, which seem to privilege a particular community.''

The incompatibility Kahn speaks of not only caused unnecessary civilian causalties, but also expedited the very atrocities NATO forces had entered Kosovo to prevent. According to Elshtain, NATO attacked Milosevic to halt ethnic cleansing, but ''our means speeded up the process, as the opening sorties in the bombing campaign gave Milosveic the excuse he needed to declare marital law and move rapidly in order to complete what he had already begun.'' As a tragic consequence, an estimated 20,000 Kosovo Albanians were murdered by Serbs in the first eleven weeks of bombing, compared with some 2,500 people that had died before the bombing campaign. Thus, the just end NATO entered Kosovo to achieve was not merely tainted, but completely undercut by unjust means.

The United States' crusade to liberate Kuwait, along with NATO's effort to free the Albanians from the torturous grip of Milosevic, demonstrate two separate, but equally justifiable criteria for waging war. In the case of Kuwait, the Harm Principal criterion was met, as one sovereign nation had harmed another, and a successful war minimized costs. But in the case of Kosovo, a righteous cause was rendered unjust by immoral means. The conflicts in Kuwait and Kosovo demonstrate two situations in which sovereignty can be justifiably violated and illustrate the necessity of just means in waging war.●

FUNERAL OF WILLIAM GRAY REYNOLDS, JR.

● Mrs. DOLE. Mr. President, when word of Bill's passing came last Wednesday, I was with my 102-year-old mother in Salisbury, NC. Mother had met Bill on many occasions, and she shared in my great grief at losing such a cherished friend. As I expressed frustration over the unfairness of Bill's death at such an early age, mother said, ''Elizabeth, it isn't how long you live, it's how you live.''

Today we pay tribute to a remarkable individual who will always stand for me as a shining example of how a truly good life should be lived.

Each of us here probably has a different word we would use to describe Bill. Words like: Kind. Thoughtful. Caring. Humble. Strong. Courageous. But perhaps the word that best captures Bill is one we hear all too infrequently these days. That word is ''gentleman.'' Gentle man.

Webster's defines a gentleman as ''a courteous, gracious, and honorable man.'' I will always define a gentleman as Bill Reynolds.

I first became acquainted with this gentleman when we were young lawyers in the Nation's capital and found ourselves on opposite sides of the courtroom. Bill was an assistant United States attorney, and I was taking cases for indigents—those who could not afford a lawyer.

The Washington, DC criminal court of those days was straight out of a Damon Runyon novel, with colorful personalities like Racehorse Mitchell, a criminal who brought new meaning to the term ''recidivist,'' and Judge Buddy Beard, a jurist who brought new meaning to the word ''irascible.'' As I watched Bill navigate and operate in this world, it didn't take me long to appreciate his honesty, his integrity, his legal skills and the ever present smile on his face and twinkle in his eye.

Bill and I became fast friends, and our experiences in the courtroom provided us with a lifetime of stories and smiles. I especially remember the night I was unexpectedly assigned by Judge Beard to my first case, a man accused of petting a lion at the zoo, a Greek immigrant who spoke no English. Mr. Marinas, after climbing into the lion's cage, was charged with the crime of violating a Federal law that says you are not to annoy or tease the animals at the National Zoo. Since he would have skipped town, I had to go to trial that very night—a trial I somehow won by arguing that without the lion there as a witness, how in the world could you know whether he was annoyed or teased? Bill's friend, Lee Freeman, the prosecuting attorney and first in my class at Harvard Law School, yelled, ''But your Honor, this man was found in the antelope cage just 3 weeks ago!'' I thought, uh-oh, take your victory and run! Bill was in the back of the courtroom providing moral support, and neither of us could drive by a zoo after that experience without a lot of laughter.

Outside of work, Bill and I visited each other's hometowns, and I had the true privilege of becoming acquainted with his parents, brother, sisters and extended family—and traveling with the family on many weekend trips. How wonderful it was to see the love that Bill's family had for one another, the joy they took in each other's company, and the commitment they shared to use their resources to help those in need.